State of Rhode Island and Providence Plantations
RHODE ISLAND BOARD OF EDUCATION
255 Westminster Street
Providence, Rhode Island 02903-3400

Enclosure 6b2
August 20, 2019

December 3, 2019

TO: Members of the Council on Elementary and Secondary Education

FROM: Amy Beretta, Appeals Committee Chair

RE: Approval of Appeals Committee Recommendation – DCYF v. Newport School Committee

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The Appeals Committee of the Council on Elementary and Secondary Education met on November 5, 2019, to hear oral argument on the appeal of the following Commissioner decision:

DCYF v. Newport School Committee

RECOMMENDATION: THAT, in the matter of DCYF v. Newport School Committee, the Commissioner's decision is affirmed, as presented.

STATE OF RHODE ISLAND **COUNCIL ON ELEMENTARY AND SECONDARY EDUCATION**

DEPARTMENT OF CHILDREN YOUTH AND FAMILIES	:
	:
vs.	:
	:
NEWPORT SCHOOL DEPARTMENT	:

In re A. Doe

DECISION

This is an appeal by the Newport School Department ("NSD") from the decision of the Commissioner of Education ("Commissioner"), dated March 8, 2019, whereby the Commissioner granted a petition by the Rhode Island Department of Children, Youth, and Families ("DCYF") requesting that NSD reimburse the cost of educational services for student A. Doe ("Doe") at NSD's special education rate.

The parties agreed upon the facts that were outlined in the Commissioner's written decision as follows. Doe was seventeen (17) years old when DCYF filed a *Request for Residency Determination and Designation of Party Responsible for the Education of a Youth Residing in a Residential Facility* (the "Petition") with the Commissioner on January 10, 2019. DCYF did not challenge NSD's claim that Doe was not a student with a disability eligible for special education services. Doe's custodial parent resided in Newport, Rhode Island. DCYF placed Doe at Harmony Hill School, a private residential facility providing educational services in northern Rhode Island. NSD refused to reimburse DCYF, or pay Harmony Hill School directly, for the

educational services provided Doe at the special education per-pupil rate. DCYF did not have a contract with Harmony Hill School to fund a pre-determined number of placements or a part of the facility's program pursuant to R.I.G.L. § 16-64-1.1(d).

The parties submitted an Agreed Statement of Facts and briefed the agreed upon dispositive legal issue. DCYF argued that R.I.G.L. § 16-64-1.1, 16-64-1.2, 16-64-1.3, and 16-64-2 provide the Rhode Island Department of Education ("RIDE") with responsibility for determining the per pupil cost to be used when calculating reimbursement to DCYF for educating children in DCYF's care. Further, DCYF argued that in the present matter R.I.G.L. § 16-64-1.1 and RIGL 16-64 -1.2 require reimbursement at the per-pupil special education cost regardless of whether the student receives special education services because the statute is unambiguous and, in the alternative, because the legislative history demonstrates that it was the General Assembly's intent that DCYF be entitled to reimbursement at the per-pupil special education rate. In response, NSD argued that the legislative history actually demonstrates that the General Assembly amended the relevant statutes in order to recognize that cities and towns should only reimburse at the applicable rate, i.e. either the general or special education rate based upon the services the student receives. Further, NSD argued that R.I.G.L. § 16-64-1.1(c) only applies if the city or town is determined to be responsible for special education services. Therefore, only R.I.G.L. § 16-64-1.1(a) is applicable, requiring NSD only reimburse for the cost of education, in this case the general education rate.

In a decision dated March 8, 2019 (the "Decision"), the Commissioner found that RIDE's authority to determine the specific per-pupil special education cost is inapposite in this case because the dispute is not over the specific special education rate that must be used, but rather whether the use of the general education rate or the special education rate for a student that is not

receiving special education services is appropriate. Further, the Commissioner determined that R.I.G.L. § 16-64-1.1(a) only applies "during the time the child is in foster care in the city or town," a fact which is not present in this matter. Therefore, R.I.G.L. § 16-64-1.1.(c) is the only relevant portion of the statute. The Commissioner noted that both the language of subsection (c) and the referenced R.I.G.L. § 16-64-1.2 refer exclusively to the "per-pupil special education cost" to be paid to DCYF for students placed in a residential facility providing educational services. Although the Commissioner found that NSD's argued interpretation was not supported by plain language of the statute, the legislative history was nonetheless evaluated since the language was not pellucid.

The Commissioner traced the history of the statutes as follows. The relevant subsection, R.I.G.L. § 16-64-1.1(c) was enacted in 1998 using the average per-pupil cost of general or special education. However, in 2001 R.I.G.L. § 16-64-1.1, 16-64-1.2, and 16-64-1.3 were all amended and all now refer to the "per-pupil special education cost." Therefore, the Commissioner concluded that the language of the statutes, taking into account the legislative history, intended to require reimbursement at the per-pupil special education cost regardless of whether the student is receiving special education services.

NSD appealed to the Council on Elementary and Secondary Education (the "Council") seeking reversal of the Decision, contending that the Commissioner erred by finding that reimbursement for a DCYF placement that is not a special education placement must be made at the per-pupil special education rate. We have reviewed the record, the party's briefs, and considered the oral argument presented. We find that NSD has not provided sufficient grounds for reversal of the Decision under our standard of review.

In considering NSD's appeal, we are mindful of the standard of review for appeals brought to the Council. Review is limited to whether the Commissioner's decision is "patently arbitrary, discriminatory, or unfair." Altman v. School Committee of the Town of Scituate, 115 R.I. 399, 405 (R.I. 1975).

On appeal, NSD argues that "the only applicable statutory section R.I.G.L. is 16-64-1.1(a) which requires Newport to pay the cost of education of the child." *Appellant Brief at page 8*. However, as noted by the Commissioner, R.I.G.L. § 16-64-1.1(a) is limited to "the cost of education of the child during the time the child is in foster care in the city or town." *Decision at page 9.* As Doe is not in foster care in Newport, subsection (a) does not apply to the current matter. We further agree with the Commissioner that R.I.G.L. § 16-64-1.1(c) is applicable here, stating that children placed in a residential facility "shall have the cost of their education paid for as provided in subsection (d) and 16-64-1.2." Subsection (d) requires DCYF to bear the entire cost of education in limited circumstances not applicable to this matter. Further, R.I.G.L. §16-64-1.2 refers exclusively to the "per-pupil special education cost of education . . . "R.I.G.L. § 16-64-1.2(c). Finally, the second clause of R.I.G.L. § 16-64-1.1(c) requires the city or town " . . . responsible to DCYF for a per-pupil special-education cost . . . . " to reimburse DCYF or pay the facility directly. We find no error in the Decision related to the application and interpretation of R.I.G.L. § 16-64-1.1(c).

Next, NSD argues that the Commissioner misconstrued the legislative history in finding that the General Assembly intended cities and towns to reimburse DCYF at the per-pupil special education rate. However, the Decision carefully outlined the previous statutory versions and correctly notes that previous versions did require reimbursement to DCYF at the "average per pupil cost of general or special education." *Decision at pages 10-11.* Subsequently, the relevant

sections were amended to remove any reference to reimbursement at the general education rate, leaving only reference to reimbursement at the per-pupil special education rate. To the extent there is any ambiguity in the statutory provisions, we again find no error in the application of the statutory history finding that the interpretation "hardly supports NSD's conclusion that the general education rate is applicable here." *Id. at 11.*

We need go no further. We find that the Commissioner correctly applied the law while properly taking into account the legislative history. Having reviewed NSD's claimed grounds for reversal, we find no error in the Commissioner's Decision meeting our standard of review. No part of the Commissioner's decision is "patently arbitrary, discriminatory or unfair." Altman at 405. NSD presented no grounds to reverse or modify the Commissioner's decision under the Council's standard of review.

For the reasons stated herein, the decision of the Commissioner is affirmed.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on November 5, 2019.

Council on Elementary and Secondary Education,

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Daniel P. McConaghy, Chair

December 3, 2019

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Amy Beretta, Esq., Appeals Committee Chair

December 3, 2019